

IN THE UNITED STATES DESIGNATED OFFICE (DO/US)

In Re the Application of:)
Horst KELLER, Ralph BEYER, Gerald AMANNT,)
and Jean-Luc BERNARD) SUPPLEMENTAL PETITION TO REVIVE
) UNINTENTIONALLY ABANDONED
) APPLICATION PURSUANT TO 37 C.F.R. § 1.137(b)
Int'l. Serial No.: PCT/EP2004/011062)
)
Int'l. Filing Date: 04 October 2004) *Filed Electronically*
)
Priority Date: 06 October 2003)
)
For: "FIRE PROTECTION GATE AND)
CORRELATED FIRE PROTECTION INSET")
)
Atty. File No.: 2584SG-5)

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The above-identified PCT application, designating the United States, became unintentionally abandoned after April 6, 2006, for failure to enter the U.S. national phase in a timely manner. Applicants have previously petitioned for correction of the national phase filing date pursuant to 37 C.F.R. § 1.10, including a petition presently pending before the USPTO to which a final disposition has not yet been received. Applicants file this Supplemental Petition to Revive for Unintentionally Abandoning the Application pursuant to 37 C.F.R. § 1.137(b) *in the alternative* to the presently filed petition pursuant to 37 C.F.R. § 1.10.

The entire delay in entering the U.S. national phase was unintentional. Once Applicants discovered that the April 6, 2006 deposit date had not been recorded for this Application, timely petitions pursuant to 37 C.F.R. § 1.10 were filed. See Exhibits A-C enclosed herewith. Applicants hereby respectfully request that the U.S. Patent and Trademark Office (DO/EO/US) now revive the above-identified application to permit national stage prosecution in the United States.

Enclosed please find the following:

- 1) Electronic payment in the amount of \$750.00 pursuant to 37 C.F.R. § 1.17(m) for the fee for revival of an unintentionally abandoned application;
- 2) Exhibits A-C evidencing Applicants' diligence in petitioning the USPTO for correction of the National Phase filing date.

We believe that no additional fees are due with this communication. If any additional fees are due, however, please debit such fees to Deposit Account No. 19-1970.

We very much appreciate your consideration of this Petition. If further information is required in order to restore the application to pending status, please contact the undersigned attorney. Thank you.

Respectfully submitted,

SHERIDAN ROSS P.C.

By: _____


Brent P. Johnson
Registration No. 38,031
1560 Broadway, Suite 1200
Denver, Colorado 80202-5141
(303) 863-9700

Date: 6/13/07

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re the Application of:

KELLER et al.

Serial No.: 10/575,019

Filed: April 6, 2006

Atty. File No.: 2584SG-5

For: "FIRE PROTECTION GATE AND CORRELATED FIRE PROTECTION INSET"

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313

Dear Sir:

) Group Art Unit:
)
) Examiner:
)
) Confirmation No.:
)
) REQUEST FOR CORRECTION OF
)
) NATIONAL PHASE FILING DATE
)

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO THE COMMISSIONER FOR PATENTS, P.O. BOX 1450, ALEXANDRIA, VA 22313-1450 ON 6 June 2006

SHERIDAN ROSS P.C.

BY: Carol Werner

In connection with the filing of the above-identified U.S. patent application, Applicants hereby request that a filing date of April 6, 2006, be assigned to the above-referenced patent application. In support of this request, Applicants provide the following information.

This application was submitted to the U.S. Post Office on April 6, 2006, for transmittal via Express Mail No. EV 788583237 US. The Certificate of Mailing correctly reflects the filing date of April 6, 2006. The return receipt post card for this application incorrectly indicates a filing date of April 7, 2006. As a result, the U.S. Post Office erred in entering the Date Accepted as April 7, 2006, for this application, rather than its actual date of filing, via Express Mail, of April 6, 2006.

This application was filed at the same time as two other applications, such other applications receiving the correct filing date of April 6, 2006. Those applications are U.S. Serial No. 10/575,009, filed on April 6, 2006, Attorney Docket No. 2584SG-4 and U.S. Serial No. 10/574,987, filed on April 6, 2006, Attorney Docket No. 2584SG-6. Copies of the stamped return cards and Express Mail receipts for all three applications are attached to the accompanying Declaration of Carol Werner as Exhibits C and D. The Express Mail receipts for Application Nos. 10/575,009 and 10/574,987, were correctly filled out by the Post Office to indicate the date accepted of April 6, 2006 and the times the mailings were accepted (see Exhibit D of Ms. Werner's Declaration). Note that the Express Mail

EXHIBIT

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receipt for the present application (i.e. Serial No. 10/575,019) does not have a "Time Accepted" entry, which is unusual for normal Post Office procedure (see Exhibit A of Mr. Abeyta's Declaration). Additionally, the Postal Clerk did not provide a stamped receipt to the undersigned's representative for this Express Mail package.

The Declarations of Carol Werner, the Secretary who prepared this application for filing and who signed the Certificate of Mailing, and Eddie Abeyta, the Office Services employee who delivered the Express Mail packages to the Post Office, are enclosed herewith for the U.S. Patent & Trademark Office's consideration.

Applicants request that the Patent Office find that this national phase application was correctly filed on April 6, 2006, and to reflect that this application should have its proper initial filing date of April 6, 2006.

Undersigned counsel requests a telephone interview with the Examiner if there are any pending questions or concerns, so as to promptly address the present issue.

Respectfully submitted,

SHERIDAN ROSS P.C.

By:

Joseph E. Kovarik
Registration No. 33,005
1560 Broadway, Suite 1200
Denver, Colorado 80202-5141
(303) 863-9700

Date: 6/6/06

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re the Application of:

KELLER et al.

PCT Application No. PCT/EP04/11062

PCT Filing Date: October 4, 2004

U.S. Serial No.: 10/575,019

Filed: April 6, 2006

Atty. File No.: 2584SG-5

For: "FIRE PROTECTION GATE
AND CORRELATED FIRE
PROTECTION INSET"

Mail Stop PCT
Commissioner for Patents
Office of PCT Legal Administration
P.O. Box 1450
Alexandria, VA 22313

Dear Sir:

The Decision of the U.S. Patent and Trademark Office dated August 17, 2006 (which was initially returned as undeliverable and subsequently mailed on September 19, 2006) is noted. In the Office's opinion, the prior petition did not sufficiently establish the third criterion. To comply with the Office's request, Applicants now submit evidence in the form of: a Declaration of Susan Willson, managing partner of foreign patent prosecution for Sheridan Ross, P.C.; a Second Supplemental Declaration of Eddie Abeyta, Sheridan Ross P.C.'s designated administrator of patent filing correspondence; a correspondence delivered to the foreign associate on April 7, 2006 confirming the filing of such application via Express Mail on April 6, 2006 (Exhibit A); a facsimile confirmation of receipt of said correspondence delivered on April 7, 2006 (Exhibit B); a copy of the Express

RENEWED PETITION UNDER
37 C.F.R 1.10(d)

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I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS
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FOR PATENTS, P.O. BOX 1450, ALEXANDRIA, VA
22313-1450 ON 11/17/06

SHERIDAN ROSS, P.C.
*Sheridan Ross, P.C.
Eddie Abeyta*

EXHIBIT

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Mailing receipt for such application (Exhibit C); and, United States Postal Service records indicating receipt of such application by the USPTO on the same day with other applications deposited on April 6, 2006 (Exhibits D - K).

Applicants direct the Office's attention to Exhibit A, which is a copy of the correspondence delivered to Grosse Bockhorni & Schumacher ("GBS") on April 7, 2006 at approximately 1:49 p.m. This correspondence, which came into existence within one day of the filing of such application, is believed to present corroborating evidence of the April 6, 2006 filing date. Applicants also direct the Office's attention to the declaration of Susan Willson, who confirmed the filing prior to signing the correspondence delivered on April 7, 2006, and the Second Supplemental Declaration of Eddie Abeyta, who is responsible for depositing Express Mail with the USPS, and as a matter of routine only does so once per day in the evening after 5:00 p.m. Any Express Mail deposited on April 7 would therefore not have been made prior to the 1:49 p.m. transmission of correspondence to GBS. Further evidence, in the form of USPS track and confirm search results, demonstrates that such application was received at the USPTO on the same day as other applications deposited by Mr. Abeyta on April 6, 2006 (See Exhibits D - K). This comports with Mr. Abeyta's statements that the case at issue was one of several collectively filed at the same time by Express Mail the evening of April 6, 2006.

The transmission report for the facsimile correspondence to GBS clearly shows it was sent at 1:49 p.m. on April 7 (See Exhibit A), confirming that the case was filed with the USPTO on April 6, 2006. This correspondence was signed by Ms. Willson, an attorney licensed in Colorado for over 30 years, and the statements contained therein were verified prior to delivery to GBS. This record was created within one day of the correct filing date of such application, and Applicants assert that

this record meets the third criterion requested by the USPTO. Applicants believe this form of evidence, having been reviewed and executed by a licensed attorney prior to delivery, presents even stronger corroborating evidence of the correct filing date than would the ministerial task of recording Express Mailing numbers and dates in a log book, which are typically performed by non-licensed staff and are far more subject to being fabricated than the evidence presented here.

Given this compelling corroborating evidence, the error here must properly be considered as being on the part of the USPS. It is Applicants belief that USPS employees may not fully understand the importance of the deposit date when Express Mail documents are deposited. For normal mail, to ensure delivery by the next business day, the last drop off time is typically around 3:00 p.m. It is believed that deposits made after 3:00 p.m. may be viewed by some USPS employees as acceptably being processed the next day. USPS employees may not fully understand that the USPTO's procedures allocate the day of an Express Mail deposit as the official filing date for a patent application. A USPS employee accepting deposit of Express Mail after 3:00 p.m. would likely see no consequence of completing the Express Mailing receipt on the following day, particularly when the deposit is made during a time approaching the closing time for that location (e.g., here the deposit was at 6:22 p.m. and the USPS office closed at 7:00 p.m.)

In conjunction with the previous evidence submitted showing the peculiar fact that no time entry was entered on the Express Mailing receipt for the application at issue, it is suggestive that such application was not recorded accurately when it was received on April 6, 2006 (See Exhibit C).

If such application were recorded properly, the Express Mailing receipt would have included an actual time entry as is required by USPS employees accepting such mailing. Notably, the other cases filed with the subject case here were indeed accorded an April 6, 2006 deposit date and such

filing receipts do reflect proper time entries. In contrast, the April 7, 2006 USPS date has no time entry yet all the cases deposited together (on April 6, 2006) were received by the PTO on the same day (April 10).

With such new evidence, and in combination with the previously submitted petitions and exhibits thereto, Applicants respectfully request the reconsideration and favorable grant of the present petition. Applicants' counsel requests the courtesy of a telephone call in the event any further questions or concerns require further discussion or elucidation. Applicants' counsel can be reached directly at (303) 863-2977. No additional fees are believed to be owing, however, if such fees are due, please deduct them from Deposit Account No. 19-1970.

Respectfully submitted,

SHERIDAN ROSS P.C.

By:

Joseph E. Kovarik
Registration No. 33,005
1560 Broadway, Suite 1200
Denver, Colorado 80202-5141
(303) 863-9700

Date: 11/17/06

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re the Application of:)
KELLER et al.) RENEWED PETITION UNDER
PCT Application No. PCT/EP04/11062) 37 C.F.R 1.10(d)
PCT Filing Date: October 4, 2004)
U.S. Serial No.: 10/575,019)
Filed: April 6, 2006)
Atty. File No.: 2584SG-5)
For: "FIRE PROTECTION GATE
AND CORRELATED FIRE
PROTECTION INSET")

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS
BEING DEPOSITED WITH THE UNITED STATES
POSTAL SERVICE AS FIRST CLASS MAIL IN AN
ENVELOPE ADDRESSED TO THE COMMISSIONER
FOR PATENTS, P.O. BOX 1450, ALEXANDRIA, VA
22313-1450 ON March 15, 2007

Binda Carpenter SHERIDAN ROSS, P.C.

Mail Stop PCT
Commissioner for Patents
Office of PCT Legal Administration
P.O. Box 1450
Alexandria, VA 22313

Dear Sir:

The Decision of the U.S. Patent and Trademark Office dated December 6, 2006 is noted. In the Office's opinion, the prior petition did not sufficiently establish the third criterion. To comply with the Office's request, Applicants now submit evidence in the form of: a Supplemental Declaration of Susan Willson, managing partner of foreign patent prosecution for Sheridan Ross, P.C; a Supplemental Declaration of Eddie Abeyta; a Supplemental Declaration of Carol Werner; a Declaration of Ian Walsworth; a Notification of Missing Requirements received in PCT/EP04/11061, a similarly situated application (Exhibit A); and a copy of email correspondence between Sheridan Ross, P.C. and Grosse Bockhorni & Schumacher on the evening of April 6, 2006 (Exhibit B).

EXHIBIT

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Applicants direct the Office's attention to Exhibit A. The application corresponding to this Notification, PCT/EP04/11061 ("the '061 Application"), was initially given the incorrect date-in of April 7, 2006, despite being deposited by Mr. Eddie Abeyta on April 6, 2006, and was subsequently taken up with the Office by petition. In fact, the last petition filed with the USPTO in the '061 Application, dated October 23, 2006, included nearly identical material as that submitted in the last petition filed for this application (Applicant's Second Renewed Petition mailed November 20, 2006). Undersigned counsel is pleased to acknowledge, however, that the priority date of October 6, 2003 is correctly reflected in the '061 Application, and prosecution is advancing (e.g., the application has not been abandoned). Given the fact that the related petition for the '061 Application was shown to deserve the accurate April 6, 2006 filing date by the USPTO, Applicants respectfully request that the present petition be granted for the same reason.

The additional evidence provided with this petition, and the evidence previously presented supports this conclusion. The correspondence delivered to Grosse Bockhorni & Schumacher ("GBS") on April 7, 2006, which came in to existence within one day of the filing of such application, is clearly corroborating evidence of the April 6, 2006 filing date as required by 37 CFR 1.10(d)(3). Applicants also direct the Office's attention to the Supplemental Declaration of Susan Willson, who personally confirmed the filing date of April 6, 2006 prior to signing the correspondence delivered the following day on April 7, 2006. The confirmation was made by reviewing the email of Carol Werner (Exhibit B) sent on April 6, 2006, and by speaking with Ms. Werner on April 7, 2006, prior to delivering the facsimile correspondence to GBS. The transmission report for the facsimile correspondence to GBS shows it was sent at 1:49 p.m. on April 7, 2006, confirming that the case was filed with the USPTO the previous day - April 6, 2006. This facsimile

was signed by Ms. Willson, an attorney licensed in Colorado for over 30 years, and the statements contained therein were verified by her speaking with Mr. Abeyta prior to conveyance of the confirmation facsimile to GBS.

This record was created within one day of the correct filing date of such application, and Applicants assert that this record therefore satisfies the third criterion requested by the USPTO. Applicants respectfully note that 37 CFR 1.10(d)(3) does not require absolute proof of mailing on the date in question - all that is required is evidence that came into being after deposit and within one business day of the filing. A log book is merely one example of how the criterion may be met with evidence of its reliability, however, it is not the only way to make a showing of corroborating evidence of the actual date of deposit. In the present application, the correspondence delivered to GBS coupled with the Supplemental Declaration of Ms. Willson leaves no question as to the accurate date of deposit, which was April 6, 2006.

Applicants also direct the Office's attention to the Supplemental Declaration of Ian Walsworth, an associate attorney with Sheridan Ross, P.C., who investigated this matter with the United States Postal Service. After discussing the failure of the USPS to properly record the Time Accepted for the Express Mailing receipt associated with this application, Mr. Walsworth was directed to Mr. Mark C. Lane (See Declaration of Ian Walsworth attached hereto). It is notable that to date no explanation has been provided as to why the Time Accepted was recorded correctly on some of the applications deposited on April 6, 2006, but not recorded at all on the present application's Express Mailing receipt. Furthermore, Mr. Lane confirmed that it is not necessarily the case, and there is no guarantee, that all Express Mail deposited prior to the last collection time for a given day would be recorded by a USPS employee on the day it was deposited. In conjunction with

the previous evidence submitted showing the peculiar fact that no time entry was entered on the Express Mailing receipt for the application at issue, it is suggestive that such application was not recorded accurately by the USPS when it was received on April 6, 2006. It is particularly suspicious that the April 7, 2006 USPS date has no time entry while the other applications retrieved from the USPS with a date-in of April 6, 2006 were recorded with an approximate time (with the exception of this application and the '061 Application).

With such new evidence, and in combination with the previously submitted petitions and exhibits thereto, Applicants respectfully request the favorable grant of the present petition. Applicants' counsel requests the courtesy of a telephone call at (303) 863-2977 in the event any further questions or concerns require further discussion or elucidation. No fees are believed to be owing, however, if such fees are due, please deduct them from Deposit Account No. 19-1970.

Respectfully submitted,

SHERIDAN ROSS P.C.

By:

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1560 Broadway, Suite 1200

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Date:

3/15/07

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